

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 19 JAN 1994

APPLICATION NO(s) 953 of 1990 and 13 of 1992.

APPLICANTS: Sh. K. S. Aralikatti and RESPONDENTS: Secretary, Ministry of
M. Nagaraj Hampole v/s. Environment, Forests & Wildlife, New Delhi
and Others.

TO.

1. Sri. K. R. D. Karanth, Advocate, No. 32, Mangal Nagar, Sankey Road Cross, Bangalore-560 052.
2. Sri. M. S. Padmarejaiah, Central Govt. Stng. Counsel, High Court Bldg, Bangalore-560 001.
3. Sri. M. H. Motigi, Government Advocate, Advocate General's Office, K.A.T. Unit, B.D.A. Shopping Complex, Indiranagar, Bangalore-38,
4. Sri. K. H. Jagadish, Advocate, No. 7, 'Thalanki Villa' 3rd Floor, Walton Road, Bangalore-560 001.
5. The Secretary, Ministry of Environment, Forests & Wildlife, Paryaveran Bhavan, C.G.O. Complex, Lodhi Road, New Delhi-110003.
6. The Chief Secretary, Govt. of Karnataka, Vidhana Soudha, Bangalore-1.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 28-12-1993.

gm*

peru for sl no 1
19/1/94
CC

Se. Shanher
For DEPUTY REGISTRAR
JUDICIAL BRANCHES. (9/1/94)

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATIONS No.953/90 & 13/1992.

THIS THE 29TH DAY OF DECEMBER, 1993

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI V. RAMAKRISHNAN ... MEMBER (A)

1. Shri K.S. Aralikatti, I.F.S.,
S/o Sri S.F. Aralikatti,
Aged 38 years,
Deputy Conservator of Forests,
Dharwad Division,
Dharwad.

(Applicant in O.A.No.953/90)

2. Shri M. Nagaraj Hampole, I.F.S.,
S/o Late K.H. Murigeppa,
Aged 28 years,
Deputy Conservator of Forests,
Madikeri Division,
Madikeri - 571 201.

(Applicant in O.A.No.13/1992) ... Applicants

(By Advocate Shri K.R.D. Karanth)

Vs.

1. Union of India
by Secretary,
Ministry of Environment,
Forests & Wildlife,
Government of India,
Paryavaran Bhavan,
C.G.O. Complex, Lodhi Road,
New Delhi - 110 003.

2. Union Public Service Commission,
Represented by its Chairman,
Dholpur House, Shahjahan Road,
New Delhi.

3. State of Karnataka,
Represented by the
Chief Secretary to Government (DPAR),
Vidhana Soudha,
Bangalore - 560 001.

4. C.D. Dyavaiah, I.F.S.,
S/o Dyavaiah,
Aged 37 years,
Deputy Conservator of Forests,
Mangalore Division,
Mangalore.

... Respondents
(Continued)

5. C.S. Kumar, I.F.S.,
S/o Late B.G. Ratnam,
Aged 35 years,
Deputy Conservator of Forests,
Office of the Chief Conservator
of Forests,
Aranya Bhavan, 18th Cross,
Malleswaram, Bangalore-3.
6. K.N. Murthy, I.F.S.,
Major,
Deputy Conservator of Forests,
Plan Division,
Dharwad.
7. D.A. Venkatesh, I.F.S.,
Major,
Deputy Conservator of Forests,
Sirei,
Uttara Kannada District.
8. P. Anur Reddy, I.F.S.,
Deputy Conservator of Forests,
Social Forestry,
Zilla Parishad, Bellary.
9. S. Shivaprakash, I.F.S.,
Deputy Conservator of Forests,
Social Forestry,
Zilla Parishad, Chikkamagalur.
10. Kishan Singh Sugala, I.F.S.,
Deputy Conservator of Forests,
Working Plans Division,
Shimoga.
11. A.K. Gargi,
Deputy Conservator of Forests,
Chamarajanagar,
12. T.V. Mohandas, I.F.S.,
Deputy Conservator of Forests,
Social Forestry Division,
Mangalore 575 003, D.K.
13. Shri Sanjai Mohan,
Deputy Conservator of Forests,
Social Forestry,
Bidar.
14. Shri P. Prem Kumar,
Deputy Conservator of Forests,
Office of the Principal Chief
Conservator of Forests,
Aranya Bhavan, 18th Cross,
Bangalore-3.

... Respondents
(Continued)

15. Shri K.S. Sai Baba,
Technical Assistant to Principal
Chief Conservator of Forests (Divn),
18th Cross, Malleswaram, Bangalore-3.
16. Shri R. Uday Kumar,
Deputy Conservator of Forests,
Bhadravathi Division,
Bhadravathi.
17. Gudipeti Vidya Sagar,
Deputy Conservator of Forests,
Gadag Division, Gadag.
18. Shri V. Rangaswamy,
Deputy Conservator of Forests,
Social Forestry,
Zilla Parishad, Tumkur.
19. Shri Punati Sridhar,
Deputy Conservator of Forests (Eligible),
Social Forestry Division,
Zilla Parishad, Bijapur. ... Respondents

(By Advocates Shri M.S. Padmarajaiah for R1 and R2,
Shri M.H. Motigi for R3 and Shri K.H. Jagadish
for R4 to 19).

ORDER

Shri V. Ramakrishnan, Member (A).

We propose to dispose off both the applications by
a common order as the issues that require determination in both
these cases are common.

2. Both the applicants, S/Shri K.S. Aralikatti in O.A.
No.953/90 and M. Nagaraj Hampole in O.A. No.13/92 have sought for
a direction that the select list made in 1986 and published on
1.1.1987 for promotion of State Forest Service (SFS for short)
Officers to the Indian Forest Service (IFS for short) should be
reviewed and that the Union Government should appoint them to the
I.F.S. on the date when substantive vacancies occurred in the
promotion quota of I.F.S. of Karnataka cadre. They have also
prayed that the order dated 9.1.1991 issued by the Central Govt.



fixing their year of allotment as 1985 in the I.F.S. should be quashed and that they should be allotted the year of allotment to which they would have been entitled if they had been appointed in the year 1986, instead of 1989 when they were actually appointed. They have also sought for a writ in the nature of mandamus directing the Union Govt. to exercise the power conferred under Rule 3 of the All India Services (Residuary matters) Rules, 1960, which empowers the Central Govt. to dispense with or relax the requirement of any rules or regulation in appropriate cases.

3. There has been some delay in filing the application and the applicants have prayed for condonation of delay. We condone the delay and proceed to dispose off the case on merits.

4. The applicants were directly recruited as Assistant Conservators of Forests (ACF for short) in the State Forest Service and after undergoing the requisite training for 2 years from 1977 to 1979 joined duty as Assistant Conservators of Forests in May, 1979. There was prolonged controversy with regard to the seniority of direct recruits to the S.F.S. vis-a-vis promotees from the cadre of Range Forest Officers. In accordance with the guidelines incorporating the principles laid down by the Supreme Court in Badami Vs. State of Karnataka, the State Govt. published a seniority list in which promotees who were appointed as A.C.F. in excess of their quota were brought down below the direct recruits. Subsequently, on the basis of the judgment of the High Court of Karnataka in Kadali Vs. State of Karnataka, the seniority list was again revised in December, 1985, wherein the position of direct recruits like the applicants came to be altered to their detriment. Some of the direct recruits challenged the decision

of the Karnataka High Court in Kadali's case before the Supreme Court. The Supreme Court did not issue any stay against judgment of the High Court in Kadali's case, but, when it finally disposed off the matter, it directed that the rule in Badami's case was to be given full effect and that the appeal and writ petitions of the direct recruits had to succeed. - Gonal Bheemappa Vs. State of Karnataka & Others AIR 1987 SC 2359.

5. As the State Govt. had issued only a provisional seniority list in December, 1985, in S.F.S. on the basis of the principles in Kadali's case, but had not issued a final seniority list, some of the direct recruits to the State Forest Service filed a writ petition before the High Court of Karnataka in 1986 to stop the State Govt. from following the said provisional list for the purpose of making appointments to the Indian Forest Service. These writ petitions of the direct recruits were transferred to the Karnataka Administrative Tribunal (KAT for short) when it was constituted. Before these writ petitions could be disposed off by the Tribunal, the applicants learnt that the select committee had prepared a select list for appointment to the I.F.S. based on the provisional seniority list published on 12.12.1985. In order to forestall appointment to the I.F.S. on the basis of such select list, the applicants sought before the K.A.T. for an Interim Order staying the publication and implementation of the select list. It is relevant to mention here that in that select list which was published on 12.1.1987, Shri Aralikatti's position was at Sl.No.12 and Shri Nagaraj Hampole's position was at Sl.No.13. The Tribunal, by its order dated 12.3.1987 issued an Interim Order directing the respondents not to publish the select list for appointment to the I.F.S. pending disposal of several applications before the Tribunal. The Union Govt. made an interlocutory application before the K.A.T. for vacating the stay of



the aforesaid order contending among others that the Tribunal had no jurisdiction to pass such an order and further stating that the select list had already been finalised and had been forwarded to the State Govt. on 12.1.1987 and stood published before the Tribunal made its order on 12.3.1987. There was also a statement in that application that if the impugned stay was not vacated, the administration would be paralysed and if the officials were to succeed in the main application, they would get all benefits retrospectively. This application was heard on 5.8.1987 and the K.A.T. held that the interim order made on 12.3.87 had become infructuous. Some persons approached the Tribunal for further direction to the State and Central Govts. against implementing the said select list and after hearing the parties, the Tribunal on 12.8.87 made an order stating that while it did not propose to give any direction to the concerned authority, in its opinion, it would be appropriate for the concerned parties to postpone further action on the basis of the select list of the I.F.S. for at-least two weeks.

6. On the question of seniority of direct recruits vis-a-vis promotees in the State Forest Service, the K.A.T. gave a judgment on 18.9.1987. It quashed the seniority list hitherto published by the State Govt. for the cadre of A.C.F. and directed the State Govt. to prepare a fresh seniority list of A.C.F. in accordance with the law laid down by the Supreme Court in the case of Gonal Bheemappa. In compliance with this direction, the State Govt. published a final seniority list of A.C.Fs of the State Forest Service on 22.7.1988 where there was a substantial improvement in the seniority position of the applicants. This was followed by a notification

dated 27.9.1988, issued by the State Govt. confirming the officials in the substantive vacancies available with the department from 1987 in accordance with the revised seniority list. Shri Aralikatti was confirmed with effect from 18.5.1978 and Shri Nagaraj Hampole with effect from 11.5.1979. As the applicants were selected to the State Forest Service and deputed for training in 1977 and were confirmed with effect from May, 1978 and May, 1979, respectively, they claim that they were eligible to be considered for appointment to the I.F.S. after 1.1.1985.

7. In the select list prepared in the last part of 1986, and which was published on 12.1.1987, there were a number of promotee officers who became junior to the applicants, by virtue of the revised gradation list in S.F.S. There were also a few whose seniority had come down to a level where they could not have come within the zone of consideration. The select list published on 12.1.1987 was not quashed by any Court or Tribunal or withdrawn by the Govt. of India, but keeping in view the sustained challenge to inter-se seniority on the basis of which the select list was prepared, the Union Govt. considered it inappropriate to proceed with the promotions on the basis of the said list. The State Govt. was advised accordingly in August, 1987. After the publication of the final select list of State Forest Service officers in July, 1988, and notification ~~in~~ confirming officers in S.F.S. in September, 1988, the process of promotion of State Forest Service ^{officers} to Indian Forest Service was taken up again. A meeting of the selection committee was convened in Bangalore on 2.3.1989, to draw up a select list. The select list was approved by the U.P.S.C. on 17.7.1989 and was communicated to the State Govt. in August, 1989 and based on their recommendations,



the applicants, among others were appointed by promotion to I.F.S. by an order dated 27.11.1989 (Annexure-A14) with effect from the same date. The Govt. of India by its order dated 9.1.1991 determined the year of allotment of both the applicants as 1985 in terms of the provisions of Rule 3 and Rule 4 of the Indian Forest Service (Regulation of Seniority) Rules, 1968.

8. It may be mentioned that Shri Nagaraj Hampole filed an application in O.A. No.150/89(F) before the Central Administrative Tribunal, Bangalore, for a direction that his case also should be considered by a special selection committee of the UPSC which was scheduled to meet on 2.3.1989 to implement the order of the Tribunal in Application No.381/87. The Tribunal dismissed this application on the ground that the special selection committee was convened to implement the orders of the Tribunal in respect of Shri Kulkarni, ^{a S.F.S. officer} whose name was not sponsored by the State Govt. for consideration for promotion to I.F.S. on the ground that he was not eligible whereas he was in fact eligible to be considered if he fell within the zone of consideration, and that Shri Hampole not having secured such an order could not at a later stage get a direction that the special selection committee should consider his case also along with the cases of those who had secured orders in their favour. Apart from the meeting of the special selection committee in March, 1989, there was also a meeting of the selection committee which went into the question of recommending candidates for filling up the vacancies in the promotion quota of the I.F.S. in the normal course and Shri Hampole along with Shri Aralikatti and some others was included in such select list and appointed to I.F.S. by notification dated 27.11.1989.

9. The applicants submitted a number of representations to

the State Govt. and the Central Govt. against what they regarded as their belated promotion to the I.F.S. and consequent depression in their seniority in that service. They wanted that the select list which had been made on 1.1.1986 should have been reviewed consequent to the order dated 18.9.87 of the K.A.T. which directed the State Govt. to prepare a fresh seniority list of A.C.Fs in accordance with the law laid down by the Supreme Court in the case of Gonal Bheemappa. They had also contended that the directly recruited junior scale officers of the 1985 batch have been promoted on 13.9.89 in excess of the quota earmarked for direct recruits. But, as they did not get any satisfactory reply to their representations, they have approached this Tribunal for a direction that the U.P.S.C. should review the select list published on 12.1.87 and that the Govt. of India should appoint them to the I.F.S. from an earlier date after reviewing the said select list.

10. We have heard Shri Karanth for the applicants and Shri Motigi and Shri M.S. Padmarajaiah for the official respondents. We have also taken into account the written arguments submitted on behalf of the private respondents.

11. The main grounds urged by the applicants for the relief sought for herein are the following:-

- a) The failure of the respondents to modify and review the Select List published on 12.1.87 is violative of the Articles 14 and 16 of the Constitution.
- b) The preparation of the fresh gradation list in the State Forest Service in accordance with the law laid down in Gonal Bheemappa's case rendered nine State Forest Service Officers who were included in the Select List published on 12.1.87 ineligible for such inclusion. The applicants contend that the remaining 4 names in the Select List which included both of them require to be re-arranged on the basis of the final gradation list of 22.7.88 in the State Forest Service.



As according to them, there were five clear vacancies available for the promotees for the year 1986, they were entitled to be appointed against those vacancies. They have also referred to the case of Shri M.R. Karki, who was appointed to the I.F.S. by an order dated 28.11.88 with effect from 1.12.1985 in accordance with the direction issued by the Central Administrative Tribunal on 28.9.1987 (T.A. No.539/87).

- c) They also assert that their case is on par with that of State Civil Service officers, who approached this Tribunal in application Nos.252, 437 and 448 of 1987 and who secured an order that the select list of promotion to I.A.S. which was prepared in 1986 should be quashed and the authorities should prepare fresh select list and to make appointment to I.A.S. on the basis of such fresh select list.
- d) They contend that under the relevant rules and regulations, the eligible State Forest Service officers have a right to be considered and if found fit to be promoted to the I.F.S. against the quota meant for promotees. The failure of the respondents to effect such promotions for long periods has resulted in clear infraction of the rights of the applicants. They have also challenged the appointment of some direct recruit I.F.S. officers to the senior scale as being in excess of the direct recruitment quota.
- e) The applicants argue that it is obligatory on the part of the Govt. of India and UPSC to grant retrospective benefit when their applications were allowed by the K.A.T. on 18.9.1987. They state that the Union Govt. had given an assurance that if the applicants were successful before K.A.T., they would get all the benefits retrospectively and that the respondents are now estopped from going back on such assurance.

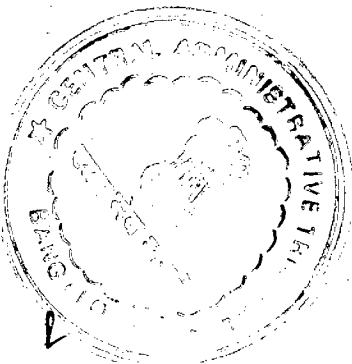
12. Shri Karanth, the learned counsel for the applicants in the course of his arguments has also relied on the judgment of the Supreme Court in Syed Khalid Rizvi & Others Vs. Union of India & Others - 1993(1)SLR 89 which according to him held that the preparation of select list every year is mandatory.

13. Promotion of members of the State Forest Service to the I.F.S. is governed by the provisions of the I.F.S.(Recruitment) Rules and I.F.S.(Appointment by Promotion) Regulations. The assignment of year of allotment of promotee officers is determined in terms of the I.F.S. (Regulation of Seniority) Rules. Rule 3 and 4 of these Rules are relevant for the purpose. Rule 4 of the I.F.S. (Recruitment)

Rules provides for promotion of substantive members of the S.F.S. Rule 8 empowers the Central Govt. to recruit to the I.F.S. persons by promotion from the substantive members of the S.F.S. who have put in the requisite period of service on the recommendations of the State Govt. and in consultation with the UPSC and in accordance with I.F.S. (Appointment by Promotion) Regulations. Rule 9 of the Recruitment Rules provides that the number of promotees shall not at any time ^{except} $33\frac{1}{3}\%$ of the number of senior duty posts borne on the State cadre. I.F.S. (Appointment by Promotion) Regulations envisages constitution of select committee, preparation of a list of suitable officers to be considered for promotion, consultation with the UPSC and appointment to the I.F.S. from the select list approved by the UPSC. Regulation 5 provides that such selection committee shall ordinarily meet at intervals not exceeding one year. Regulation 9 states that the appointment of members of S.F.S. to the I.F.S. shall be made by the Central Govt. on the recommendation of the State Govt. in the order in which the names of the members of the S.F.S. appear in the select list for the time being in force.

14. On the basis of the pleadings and the contentions before us, the points that arise for our determination are as follows:-

- (A) Does the fact that the seniority of the applicants underwent an improvement in the S.F.S. consequent to the judgment dated 18.9.1987 of the K.A.T. leading to the preparation of a fresh seniority list, automatically entitle the applicants to be assigned an earlier year of allotment to the I.F.S. and is it incumbent upon the official respondents on their own to modify the select list published on 12.1.1987? This is in the context that some of the officers whose names figured above the applicants in the select list published on 12.1.1987 for promotion to I.F.S. (but which was not operated upon) became juniors to the applicants in SFS.
- (B) Is it mandatory for the select committee to meet every year to prepare a select list for promotion from S.F.S. to the I.F.S. and if it fails to do so, what is the effect of such failure?



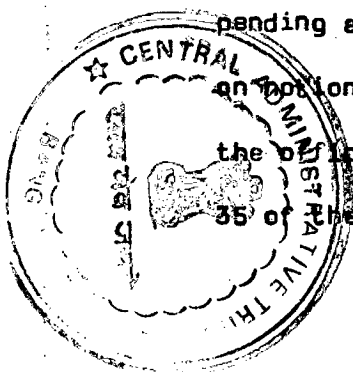
- (C) Are the cases of the applicants on par with those of some of the direct recruit State Civil Service Officers, viz., Shri Halappanavar and Others?
- (D) Are the cases of the applicants on par with that of Shri M.R. Karki, a direct recruit State Forest Service Officer promoted to the I.F.S.?
- (E) Does the failure to fill up in full the promotion quota to the I.F.S. make appointment of direct recruits to the senior scale illegal?

15. These points may be answered as follows:

Point No. 'A' :- We may refer to our judgment in O.A. No.520/91 and 329/93 - Shri Halappanavar Vs. Union of India & Others and Shri ^{Abbot} David Vs. Union of India & Others, where we have held that revision of the seniority list in the State Service consequent to Court directions does not automatically confer on the applicants the benefit of getting an earlier year of allotment in the All India Service disregarding the relevant statutory rules and regulations. The same principle would apply in the present case also. As such, the fact that the applicants became senior to some other officers of the S.F.S. who got promoted to the I.F.S. on the basis of an earlier seniority list does not automatically entitle the applicants to be ranked senior to them in the I.F.S. It is also relevant to state here that even though the Supreme Court in Gonal Bheemappa's case modified the judgment of the High Court, it did not issue any stay against the operation of the High Court judgment pending final disposal. In the present case, unlike in the case of certain direct recruit State Civil Service Officers, there was no direction by any competent Court or Tribunal to quash the select list published as on 12.1.1987. We cannot at this late stage issue similar direction as given by the C.A.T. by its order dated 20.1.1988 in the case of Shri Halappanavar & Others - ATR 1988(1)CAT 298. It is not possible

to accept the contention that the select list published on 12.1.1987 should have been operated in part by keeping out those officers who became junior to the applicants in the final gradation list in S.F.S. published on 22.7.1988. It cannot be argued that part of the select list is in order and the rest of it is illegal. The official respondents did not think it appropriate to proceed with promotions on the basis of the select list published on 12.1.1987. As such, we cannot accept the contention of the applicants that the select list published on 12.1.1987 should have been reviewed by the UPSC, etc. on their own and that subsequent revision in the seniority in the S.F.S. should automatically be reflected in the I.F.S. also.

Point No.'B' :- As regards the question whether it is mandatory for the select committee to meet every year, regulation 5 of the Promotion Regulation stipulates that the select committee shall ordinarily meet at intervals not exceeding one year for filling up by promotion the number of promotion vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of the select list. Shri Karanth, the learned counsel for the applicants drew our attention to the judgment of the Supreme Court in Syed Khalid Rizvi and Others Vs. Union of India & Others 1993(1)SLR 89, where he says, the Apex Court had laid down that preparation of the select list every year is mandatory. In that case, the promotee officers had occupied cadre posts in I.P.S. for long and the concerned authorities did not take action to prepare select list for a number of years, viz., 1971, 1975, 1976, 1979 and 1980. The Supreme Court pending appeals directed the State Govt. to prepare the select list on rotational basis for each of these years to consider eligibility of the officers as per rule. It is relevant to reproduce paras 34 and 35 of the judgment in Rizvi's case.



34. It is next contended that by non-preparation of the select list, the promotees had lost their chances of promotion to get into super time scale of pay and so on. Preparation of the annual seniority list is, therefore, mandatory and that by its non-preparation the rules have been collapsed. The argument ex-facie is alluring but lost validity on close scrutiny. The contention bears two facets: firstly preparation of the seniority list and secondly the consequences flowing from the omission to prepare the seniority list. It is already held that the committee shall prepare the seniority list every year and be reviewed and revised from time to time taking into account the expected or anticipated vacancies during the year plus 20 percent or two vacancies whichever is more. It is already held that the wide distinction exists between appointment by direct recruitment and one under Regulation 9 of Promotion Regulation and Rule 9 of Recruitment Rules on the other hand and under Regulation 8 thereof read with rule 9 of cadre rules on the other hand. Their consequences are also distinct and operate in different areas. Prior approval of the Union Public Service Commission and prior concurrence of the Central Govt. are mandatory for continuance of temporary appointment under Regulation 8 beyond six months and three months respectively together with prompt report sent by the State Govt. supported by reasons therefor. In their absence it is not a valid appointment in the eye of law. Unless an officer is brought on the select list and appointed to a senior cadre post and continuously officiated thereon he does not acquire right to assignment of the year of allotment, Eligibility age for consideration was only upto 52 years and presently 54 years. If the list was not prepared though for the succeeding year the age barred officers may be considered but was made to compete with junior officers who may eliminate the senior officer from the zone of consideration. Suppose in 1980 the senior officer was not qualified though the list was made, but in 1981 he could improve and become eligible. Non-preparation of the select list for 1980 disables the officer to improve the chances. In Sehgal's case, this Court held that chances of promotion and the aspiration to reach higher echelons of service would enthuse a member of the service to dedicate assiduously to the service with diligence, exhibiting expertise, straight forwardness with missionary zeal, self-confidence, honesty and integrity. The absence of chances of promotion would generate frustration and an officer would tend to become corrupt, slown and a mediocre. Equal opportunity is a fertile resource to argument efficiency of the service. Equal chances of promotion to the direct recruits and the promotees would produce harmony with accountability to proper implementation of government policies. Unless, the select list is made annually and reviewed and revised from time to time, the promotee officers would stand to lose their chance of consideration for promotion which would be a legitimate

expectation. This Court in Mohan Lal Capoor's case held that the committee shall prepare every year the select list and the list must be submitted to the U.P.S.C. by the State Govt. for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no hesitation to hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford and equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Govt. concerned and this court takes serious note of wanton infraction.

35. The question then is whether the failure to prepare the select list could give rise to an inference that rules have been collapsed and the State Govt.'s local arrangement shall be given legitimacy as regular appointments? After giving our anxious consideration of the end resultants, we find it hard to accept the contention. The reasons are manifold. The appointment by promotion to the Indian Police Service and as a fact to any All India Service and determination of inter se seniority bear vital effect to the higher echelons of super time scale of pay and the above. The State Govt. and the Central Govt. should strictly comply with the provisions in making recruitment by promotion from the State Service to the All India Services. If laxity has been given legitimacy and deemed relaxation is extended it would not only upset smooth working of the rules but also undo the prescribed ratio between promotees officers and direct recruits. It would also produce adverse effect at the All India level. Moreover, the concept of All India Services introduced to effectuate the national integration by drawing persons from different regions by direct recruitment into concerned states cadres would be defeated by manipulation. National integration would be disturbed and frustrated. Smooth implementation of the rules would be deflected and distortions in service would gain legitimacy and acceptability. While the Central Govt. remain statutory appointing authority the State Govt. gets into saddle and would become de facto appointing authority. The junior-most and unqualified or unfit would be pushed from back door and pumped up into higher echelons, eroding efficiency and honesty. We, therefore, hold that for failure to prepare select list every year, rule 3(3)(b) of the Seniority Rules, Rules 5 and 9 of Recruitment Rules and Regulation 9 of Promotion Regulations have not been broken down and the appointment by local arrangement by the State Govt. under Regulation 8 of the Promotion Regulation and Rule 9 of Cadre Rules are not valid and legal. The promotee officers are not entitled to count their whole officiating period towards their seniority." (emphasis supplied).

In the present case, the select committee had not been meeting regularly.

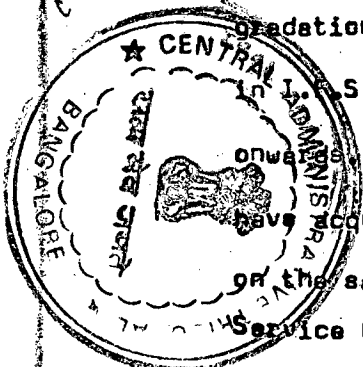
One such meeting was held in December, 1986, and the select list was published on 12.1.1987. This select list, however, was not operated upon by the Union Govt. for the reason that the seniority list on the

the strength of which the select list was prepared having been struck down, it would not be appropriate for the Govt. to act on the same. The next select committee meeting was held only in March, 1989. The failure to meet at regular intervals as envisaged in the rules was on account of the raging controversy with regard to the seniority of officers in the State Forest Service. This question was finally settled on the basis of the direction of the Supreme Court in Gopal Bheemappa's case as also the directions of the K.A.T. to the State Govt. to follow the law laid down in that case while preparing the final gradation list. The final seniority list of A.C.Fs could be published by the State Govt. only on 22.7.1988 which was followed by a notification dated 27.9.1988 confirming the officials in the S.F.S. The select committee met on 2nd March, 1989, to draw out the select list which was finally approved by the UPSC on 17.7.1989. This was communicated to the State Govt. in August, 1989 which submitted its recommendations by its letter dated 28.9.1989 and the applicants among others were appointed by promotion to the I.F.S. with effect from 27.9.1989.

These were extraordinary circumstances and it cannot therefore be contended that there was any dereliction of the statutory duty by the concerned authorities, as there is a satisfactory explanation for the failure to prepare the select list every year.

Point No. 'C' :- The applicants contend that the position in law in regard to the select list made as on 1.1.1986 consequent to the order of the K.A.T. is on par with the select list which had been made for the I.A.S. in December, 1986 and quashed by the C.A.T. in application No.252, 437 and 448 of 1987. In the cases referred to, Shri Halappanavar, a State Civil Service Officer and some others approached the C.A.T. challenging the proceedings of the selection

committee which met on 4.12.1986 and also the proceedings of the UPSC and the Union Govt. After taking into account the orders of the Supreme Court in Gopal Bhsemappa's case, the C.A.T. by its direction dated 20.1.1988 annulled the select list prepared by the select committee in its meeting held on 4.12.1986 and approved by the UPSC as also the notification of the Govt. of India appointing certain persons to the I.A.S. It directed the authorities to make selection on the basis of the seniority list in the State Service to be drawn up afresh. It issued a specific direction to the Govt. of India and the State Govt. to make appointments to I.A.S. from such fresh select list for the vacancies that existed from time to time from 1.1.1987 and onwards. These directions of the Tribunal were complied with and the Central Govt. by its order dated 11.5.1990 appointed Shri Halappanavar to the I.A.S. retrospectively with effect from 1.6.1987. In the present case, the applicants had approached the High Court and their case was transferred to the K.A.T. They had moved the K.A.T. for an interim order for staying the publication and implementation of the select list published on 12.1.1987. As brought out earlier, even though the K.A.T. gave such an interim order, the same was vacated later. The applicants had not moved the Central Administrative Tribunal on similar lines as Shri Halappanavar nor did they get a specific direction from the competent forum that the earlier select list should be quashed and that a fresh select list should be prepared on the basis of the revised graduation list in the State Service for vacancies which existed from time to time from 1.1.1987 and onwards. As they did not do so, they cannot now claim that they have acquired a legal right that their cases should be regulated on the same lines as in the case of the direct recruit State Civil Service Officers referred to above.



Point No. 'D' :- The applicants have sought to rely on the case of Shri M.R. Karki in support of their claim. Shri Karki was a direct recruit Assistant Conservator of Forests in the State Forest Service and was appointed as such in March, 1975. He was eligible to be considered for promotion to the I.F.S. from 1982. When the select committee met on 9.12.1983, the committee was informed that the maximum number of State Forest Service Officers who could be included was three. It turned out to be a mistake and the State Govt. subsequently informed the UPSC and the Govt. of India to rectify the mistake which the latter did not do on the ground that they have no power of review under the law. Shri Karki approached the C.A.T which held that the UPSC and the Govt. of India should correct an obvious mistake or error and there was no need for an express conferment of power on them by law for ^{making} ~~modifying~~ such correction. Shri Karki got a direction that the UPSC should first correctly ascertain the number of vacancies as in December, 1983 and then take necessary steps for inclusion of suitable and eligible officers and further he should be extended all consequential benefits inclusive of all monetary benefits to which he was entitled to if he was selected and appointed from any earlier date under the regulations. His case was accordingly considered and he was promoted to the I.F.S. with effect from 1.12.1985 by a notification of the Govt. of India dated 17.11.1988. Clearly, therefore, the facts and circumstances of the case of Shri Karki are very different from those of the present applicants.

Point No. 'E' :- It is a fact that the promotion quota to the I.F.S. in respect of Karnataka cadre was not completely filled up. This does not mean that appointment of direct recruits to senior posts was excessive or illegal. The strength and composition of the

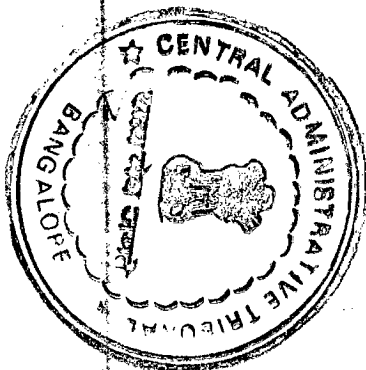
I.F.S. cadre in each state includes senior duty posts under the State Govt., Central deputation reserve and various other reserves like, leave reserve, training reserve, etc. The statutory rules have only fixed a ceiling in respect of recruitment by promotion and therefore there is no quota as such for the direct recruits. There is, therefore, no merit in the contention that illegality has been committed by appointing a number of direct recruits to senior duty posts before completely filling up the promotion quota.

16. It is, therefore, clear that the official respondents have conformed to the legal requirement, and have not committed any infraction of the statutory rules and regulations by appointing the applicants to the I.F.S. on 27.11.1989 by a notification ^{issued} on the same date. On such appointment, the applicants have been assigned 1985 as the year of allotment in terms of the provisions contained in the I.F.S. (Regulation of Seniority) Rules. We cannot accept the stand of the applicants that they have a legal right to be assigned a year of allotment earlier than what has actually been done.

17. We may, at this stage refer to one of the reliefs sought for by the applicants, viz., that we should issue a writ in the nature of mandamus to the official respondents to exercise their power conferred under Rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960. Rule 3 of the aforesaid rules reads as follows :-

"Power to relax rules and regulations in certain cases - Where the Central Government is satisfied that the operation of -

- (i) any rule made or deemed to have been made under the All India Services Act, 1951 (61 of 1951) or
- (ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any



particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner".

It is evident from the above that such relaxation can be done only by the Central Govt. in individual cases where the normal operation of any rule or regulation regulating the conditions of service causes undue hardship and the relaxation has to be to such extent as the Central Govt. may consider necessary for dealing with the case in a just and equitable manner. The Supreme Court in Syed Khalid Rizvi's case referred to supra, had observed that the conditions of recruitment and conditions of service are distinct and the latter is preceded by appointment according to rules. The conditions of appointment cannot be relaxed and the Central Govt. cannot do away with the eligibility criteria for appointment to an All India Service by appointing a person who has not put in the requisite period of service in the State Service, or one who is not confirmed in the State Service. It has been further held that regulation of seniority rules are mandatory. After an officer is promoted to the I.F.S. with effect from a certain date his seniority has necessarily to be determined in terms of the I.F.S. (Regulation of Seniority) Rules. It may, however, be examined as to whether as has been done in certain other cases (albeit on the basis of Court directions), the applicants can be appointed to the I.F.S. from a date earlier than the date of notification, viz., 27.11.1989, but, in any case not earlier than the date on which they became eligible to be considered for appointment.

18. It is for the Central Government to exercise the power available under this rule on the basis of an objective consideration of all the relevant facts and circumstances and within the framework laid down by the rule itself. It is not open to the Tribunal to order the Central Government to effect relaxation, much less to give a direction as to the manner and extent of such relaxation. All that we can say is that the competent authority should apply its mind to the question and come to an objective finding and take necessary action on the basis of such finding.

19. It will, however, be relevant to note certain special features in the present case:

a) While there were valid reasons to explain the failure of the Select Committee to meet every year, the fact remains that this has resulted in the State Forest Service Officers in not getting promotion in time to the IFS. We are informed that Shri Kirki was appointed to the IFS with effect from 1.12.1985 and was assigned 1980 as the year of his allotment. The applicants who are the next promotee officers after Shri Kirki in the IFS of Karnataka Cadre have been appointed to the IFS in November, 1989 and assigned 1985 as the year of allotment, even though there were admittedly vacancies available to be filled up by promotion during the intervening period.

b) The revised gradation list in the S.F.S. was published on 22.7.1988 and the applicants were confirmed by a notification dated 27.9.1988. (This notification,

however, confirms them retrospectively from 18.5.1978 in the case of Shri Aralikatti and 11.5.1979 in the case of Shri Nagaraj Hampole). The meeting of the Selection Committee was held on 2.3.1989 and the Select List which was prepared was approved by the UPSC on 17.7.1989. This was communicated to the State Government on the 10th August, 1989 and the latter sent its reply on 28.9.1989. The applicants were then appointed by promotion to the IFS from 27.11.1989.

While it is not imputed that there was any deliberate delay, it is seen that considerable time elapsed between the date of publication of the revised gradation list followed by confirmation of the applicants in the State Forest Service and the date of their actual appointment to the IFS.

c) While moving the KAT to vacate the interim stay in publication and implementation of the Select List published on 12.1.87, the Union Government in para 6 of their interlocutory application (Application No. 246 of 1987 before K.A.T.) has stated as follows:-

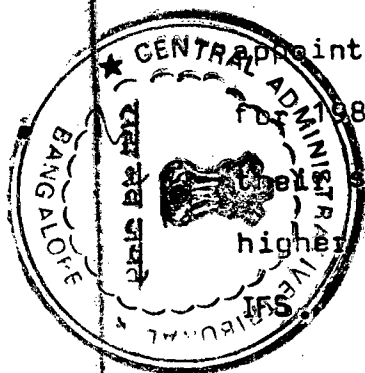
"Since the list has already been prepared and published, the only remaining thing is to issue appointment orders. The appointments are required to be made without any delay as the administration of department is suffering both at the Central and the State level for want of qualified candidates. If the impugned order is not vacated, the administration would be paralysed and it would not in any way benefit the candidates who are parties hereto, as the applicant if he succeeds, in any case, he would get all the benefits retrospectively".

This application by the Government of India was mainly on the ground of lack of jurisdiction and as it happened, the official respondents did not operate the Select List published on 12.1.87. However, there was a statement that if the applicants succeed, they would get all the benefits retrospectively.

d) We had already referred to the position with regard to State Civil Service officers who were appointed to the IAS by the Government of India by an order dated 11.5.90 but with effect from May 1987, June 1987 etc. While it is true that the present applicants did not acquire any legal right to be treated on the same footing, as they did not get appropriate directions from a competent court, the position is that the two sets of cases are otherwise analogous.

20. In the light of the foregoing, we dispose of the present application as per observation and direction below:-

1) We cannot uphold the contention of the applicants that the official respondents should review the Select List made for 1986 and published on 12.1.87 and appoint them to the IFS on the date when the Select List for 1986 was originally made. We also do not agree with their stand that they have a legal right for getting higher seniority and earlier year of allotment in the



2) We direct the Central Government, Respondent No.1 that they should take into account all the relevant facts and circumstances and come to an objective finding as to the need for invoking Rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules 1960 in respect of the applicants before us and on the basis of such finding take appropriate steps as per law. This exercise should be completed within six months from the date of receipt of a copy of this order.

21. We make no order as to costs.

Sd/-

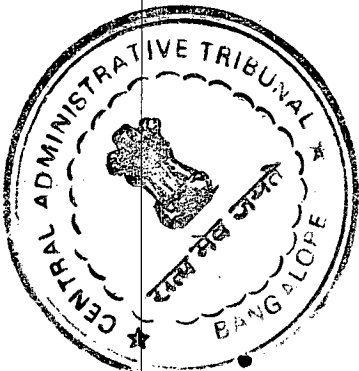
Sd/-

(V. RAMAKRISHNAN)
MEMBER (A)

(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

psp.

TRUE COPY



Sd. S. S. S. S. 19/1/99
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Miscellaneous Appn No. 414/94

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

GN

Dated: 29 SEP 1994

APPLICATION NO: 953 of 90.

APPLICANTS:- Sri. K.S. Aalakkathi IPS,
V/S.

RESPONDENTS:- Secretary, M/o Environment & Forests, New Delhi
and Others

To

1. Sri. K.R.D. Karanth, Advocate, 32, Mangalanagar,
Sarkey Road Cross, BANGALORE-560052.
2. Sri. M.S. Padmanajiah, Sr. Central Govt Stg Counsel,
High Court Bldg, Bangalore-560001
3. Sri. K.H. Jagadish, Advocate, No. 7, "Thalanki Villa"
Third floor, Welton Road, Bangalore-560004.

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

--xx--

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 19.9.94

Issued on

29/9/94 B

o/c

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

Office Notes

Orders of Tribunal

MA 414/94

PKS(VC)/TVR(MA)

19.9.94.

Heard. Time for compliance

extended upto 31.12.94. No further extensions.



Sdr

M(A)

Sdr

V.C.

TRUE COPY

Section Officer

Central Administrative Tribunal

Bangalore Bench

Bangalore